
Index

- Abbamonte, G 203
 - academic scholarship
 - European legal identity 83–5, 88–9, 91, 93, 94, 103, 106, 107
 - future of contract law in Europe 549, 550, 556–60
 - interdisciplinary 103, 359, 556–7
 - access justice 530–533
 - access to
 - finance 317–19
 - justice 415, 419, 421, 557
 - accountability
 - public law 56, 58, 67
 - administrative law 144–5, 332
 - adversarial legalism 103
 - advertising 2, 319
 - behavioural 235
 - unfair commercial practices 209, 210, 212, 214, 216, 217, 389, 390, 397, 398
 - age discrimination 119–21, 135
 - agency capture 56, 422
 - agency costs 56
 - Agenda 2020 strategy 13–14
 - air passengers' rights 103, 360, 361, 520
 - business travellers 362
 - information 376
 - performance, rules on 375–6
 - information when service not realised 374
 - Unfair Contract Terms Directive and low-cost flights 377–81
 - airline tickets, online sales of 396
 - Alemo-Herron* (Case C-426/11) 126–7
 - Allianz Spa v West Tankers (The Front Comor)* (Case C-185/07) 167, 168
 - alternative dispute resolution (ADR) 42, 67, 106, 386, 408, 417–20, 426–7, 554, 558
 - collective settlements 420, 422
 - alternative procedures 413–14
 - ADR 42, 67, 106, 386, 408, 417–20, 422, 426–7, 554, 558
 - payment orders 414
 - small claims 414–17, 426–7
 - Amazon.com 228, 235
 - Andersen, E 538
 - annual percentage rate (APR) 231, 295, 319–20
 - annual percentage rate of charge (APRC) 324
 - appeals 416
 - Apple 427
 - applicable law 160, 161–2, 164, 165, 173, 560
 - consumer contracts 163
 - online legal information system 558, 559
 - Rome I Regulation 17, 33, 178–80, 411–12, 433, 541, 553
 - CESL, proposed 440–441, 442, 449–50, 469, 475–7, 484
 - Rome II Regulation 163, 178, 412, 469, 484
 - standard contracts as means to harmonisation 489–502, 506
 - arbitration agreements/clauses 105–6, 305
 - ADR 420
 - jurisdiction 160, 162, 164, 165, 166, 167, 168
 - unfair contract terms 105–6, 420
 - US: consumer contracts 105, 108, 420
- Arnull, A 103
 - Asbeek Brusse* (Case C-488/11) 290–291, 301
 - assembly, freedom of 186
 - asset pricing 321
 - Association Henri Capitant 91, 154, 444
 - astroturfing 384
 - Atiyah, PS 538
 - auction sales 273, 473
 - Australia 82
 - Austria 26, 60, 270
 - consumer organisations 308, 423

- autonomy 42–8, 511, 512, 513, 515, 528, 532, 538, 560
 - financial services 316, 320, 335
 - free movement 189, 192, 194
 - information duties 223, 403
 - private international law 160, 162, 163, 165, 179, 180
 - theories of private law's 512–13
 - travel law 380
- average consumer *see* consumer image within EU law
- Aziz* (Case C-415/11) 131–3
- bailiffs 416
- Banco Español de Crédito* (Case C-618/10) 302–3, 305–6
- banks 38, 50, 314, 316, 540
 - bank accounts 317–18
 - bank guarantees
 - undue influence 50, 51
 - Banking Union 61, 62–3
 - financial products: warnings 323
 - investment services 328
 - mortgage credit 324
 - responsible lending 321–2
 - travel agents and linked credit agreements 381, 382
 - unfair contract terms 310
 - bank charges 294–5
 - see also* financial services
- bargaining power 49–51, 263, 538–9, 540
 - Common European Sales Law, proposed 17, 33
 - financial services 316, 318
 - Germany: inequality of 127–8
 - information duties 223
 - private international laws, EU 162–3
 - unfair contract terms 288–9, 290–291, 300–301, 305, 313
- barter 271
- behavioural advertising 235
- behavioural economics 204, 221, 226–7, 239, 510
- behavioural psychology 332
- Belgium 26
 - consumer credit 323
 - responsible lending 324
 - services 341
 - terminology, implementing EU 147
 - unfair contract terms 299
- big data 231–40
- bounded rationality 204, 227, 228, 230, 320, 330
- Bradgate, JR 272
- Briggs, A 163, 172–3, 178
- broadcasting
 - freedom of contract 47
- Brogstetter v Fabrication des Montres Normandes* (Case C-548/12) 169
- building contracts 338, 339, 343
- burden of proof
 - reversed 278
 - service contracts 353
- business, right to conduct 47, 126–7, 129, 133, 136, 182, 195, 196, 525, 542
- business-to-business (B2B) contracts 64, 431, 433–4, 461, 523
 - Common European Sales Law, proposed 15, 64, 433, 440, 441, 443, 450, 458–9, 473, 478, 479–81, 484
 - cross-border contracts 451, 473
 - competition 58
 - third-party access 61
 - Germany: Consumer Sales Directive 78, 80
 - Poland: Consumer Sales Directive 80
- business-to-consumer (B2C) contracts 64, 432–3, 434, 461, 523, 525
 - Common European Sales Law, proposed 15, 64, 440, 441, 443, 449–50, 457–8, 475–6, 478, 479–81, 483
 - credit 451
 - cross-border contracts 451–2
 - party choice 482–3
 - remedies for non-conformity 455–6
 - competition 58, 61
 - Germany: Consumer Sales Directive 78
 - unfair commercial practices *see separate entry*

- unfair contract terms *see separate entry*
- Bussani, M 91
- buzz marketing 384
- Canada 82
- cancellation rights 59, 145
- capacity
 - formation of contract 20, 32, 469
- capital market 36–7
- Cappelletti, M 85
- Caruso, D 545
- Cassis de Dijon* (Case 120/78) 105, 223
- CEN/CENELEC 41
- Central and Eastern European Member States 308
- Česká sporitelna v Feichter* (Case C-419/11) 169
- CESL *see* Common European Sales Law, proposed
- Charter of Fundamental Rights (EUCFR) 110, 542
 - access to services of general economic interest 357
 - annual paid leave 121
 - Brussels I Recast Regulation 165
 - business, right to conduct 47, 126–7, 129, 133, 136, 182, 195, 196, 525, 542
 - CJEU 113
 - Commission 116
 - competencies, EU 112
 - consumer protection 117, 119, 125, 129, 525
 - direct horizontal effect 135
 - effectiveness test 129
 - equality between men and women 118–19, 135, 136
 - EU institutions and bodies 111
 - home, right to 133, 135, 136, 546–7
 - linguistic diversity 158
 - member states 111–12
 - negative obligations 113
 - non-discrimination 118–21, 158
 - positive obligations 129, 130
 - preliminary reference (Art 267 TFEU) 112
 - private international law 165, 172, 177
 - proportionality 543
 - remedy, effective 114, 130
 - rights and principles 129
- Cherednychenko, O 85
- children
 - average targeted consumers 208
 - average vulnerable consumers 211, 212, 213, 214, 216, 405
 - product safety 219
- CILFIT* (Case 283/81) 143, 146
- civil law countries 4, 268, 348, 537–8, 556, 560
 - convergence between civil law and common law 490–492
 - challenges 492–502
 - decodification 68–9, 74
 - directives, implementation of 3–4
 - Germany: Consumer Sales Directive 74–9, 80–81
 - as legislative challenge 68–74
 - Poland 79–80, 81
 - terminology 146–8
 - recodification 69
 - regulatory private law 49–50
 - see also individual countries*
- civil procedure
 - cooperation on matters of 23
- class actions 408, 413, 420–423, 427
 - United States 105, 422
- classical economics 203–4
- climate change 556
- cloud computing 472
- co-operative society 20, 30
- co-regulation 41–2
- codes of conduct 316, 355, 378, 558, 561
 - unfair commercial practices 390, 392
- Cofidis* (Case C-473/00) 289, 307
- cognitive systems 226–7
- collective and public redress 42, 420–426
 - class actions 105, 408, 413, 420–423, 427
 - unfair contract terms 300, 301–2, 308–11, 423
- Collins, H 545

- commercial agents 90, 97, 519, 520
- commercial practices law 38
- Commission 92, 107, 427, 432–3, 528, 548, 552, 560–561
 - ADR 418, 419
 - Better Regulation Agenda 24
 - collective and public redress 177, 422, 424
 - class actions 421
 - consumer protection cooperation 424–6
 - Common European Sales Law, proposed 6–7, 8, 92, 98, 155, 312, 431, 433, 461, 463–4, 467–8, 469, 470, 474–5, 477, 479, 482, 485, 535–6, 553
 - constitutional objections 13–34
 - digital content 448, 450
 - from DCFR to 436–48, 453
 - competition law 177–8
 - commitment decisions 58, 67
 - digital single market 7–9, 13, 34, 64, 485–6
 - emergence of European contract law 5–6
 - financial services 317–18
 - fundamental rights 116–17
 - Green Paper (1993) 268
 - Green Paper (2007) 73, 435
 - Green Paper (2010) 438–9, 448, 467
 - justice for growth 521
 - maximum harmonisation 4–5, 9, 60, 72–3
 - New Approach 57, 67
 - small claims 416, 417
 - standard contracts 488
 - terminology in contract law 153–4
 - unfair commercial practices 200, 207, 209, 212, 214, 215, 216–17, 392, 396–7, 402
- Commission v France* (Case C-265/95) 128, 186, 187
- Commission v Spain* (Case C-70/03) 302
- Common Core of European Private Law Project* 91
- Common European Sales Law, proposed 6–7, 8, 60, 64, 81, 92–3, 98, 155, 267, 281–6, 449–62, 463–86, 519, 521
 - Annex I 449, 452–3, 466
 - applicability and scope 283–4, 449–52
 - B2B contracts 15, 64, 433, 440, 441, 443, 450, 451, 458–9, 473, 478, 479–81, 484
 - code, use of term 468–74
 - constitutional objections to harmonisation *see separate entry*
 - consumer protection, level of 457–8
 - differences from DCFR 454–7, 469
 - digital content 13–14, 15–16, 448, 450, 452, 454–5, 470–472, 473, 485
 - double approach to commercial contracts 503
 - fate of 431, 459, 553
 - Council 461
 - European Parliament 7, 459–60, 465, 472, 473, 477, 478, 479, 481, 485
 - future 461–2
 - from DCFR to 436–9
 - consumer protection, high level of 442–3
 - feasibility study 447–8, 455, 456, 467
 - initial instructions 439–40
 - mandatory and default rules 441
 - relationship to Rome I 440–441, 442, 448
 - scope of application 440–441, 448
 - SMEs 443
 - working method 443–7
 - opting for second regime of uniform rules 481–4
 - optional uniform rules 474–81
 - outline of 285–6, 463–8
 - private international law 160, 179–80
 - purpose of 15–16, 282–3, 412, 483
 - remedies for non-conformity 455–6, 476
 - services related to sales contract 356
 - SMES 15–16, 64, 443, 450, 458–9, 475, 478, 479–80

- unfair contract terms 287, 312, 452, 455, 458, 468, 477
- common law countries 537–8, 560
 - convergence between civil law and common law 490–492
 - challenges 492–502
 - regulatory private law 49–50
 - see also individual countries*
- communitarianism 512, 515, 527
- companies 194
 - groups of 434, 479
 - incorporation and organisation of 291
- company law 37–8
 - Statute for European Company 22
- compensation *see* damages/compensation
- competence creep 29
- competition 53–4, 58–65, 223
 - competitive contract law 58–9, 60, 61–2, 64
 - digital single market 64–5
 - efficiency 59, 61
 - financial stability 61–4, 67
 - UCP Directive and national laws of fair 404
 - withdrawal rights 247, 248–9
- competition law 35, 53–4, 177–8, 421, 520, 544
 - applicable law 163
 - block exemptions
 - vertical agreements 39–40
 - competitive contract law 58–9, 60, 61–2, 64
 - enforcement 555
 - negotiated commitment decisions 57–8, 67
- complexity 557, 559
 - CESL, proposed 31–2, 474–5, 478, 480, 483, 485
 - consumer financial products 126
 - fundamental rights 136
 - national conceptions of ‘contract’ 96–7
 - outsourcing of regulation 55–7
 - US experience and EU consumer law 102
 - withdrawal rights 242, 244, 253
- conferral principle 18
- conflict of interest 349
- consensualism 545
- consent 480, 483, 513, 532
 - medical treatment: informed 348
 - to performance
 - restricting withdrawal rights 257–8, 265
- constitutional objections to
 - harmonisation: proposed CESL 13–34
 - complexity, legal gaps and costs 31–2
 - conferral principle 18
- consumer choice 17, 33
- consumer protection 33, 34
 - impact assessment 24–8, 31
- internal market imperative 29–33, 34
- interpretation by national courts 32
- legal base 14, 464
 - Art 114 TFEU 18–19, 20, 21, 22, 24, 29–31, 33
 - Art 352 TFEU 20–23
 - civil procedure cooperation 23
 - optional contract law regime 16–17
 - Art 114 legal base 18–19, 22
 - Art 352, 22–3
 - uncertainty 33
- subsidiarity 14–15, 22, 29, 33–4, 464, 478
 - Art 114: eliminate obstacles 18
 - impact assessment 24–8
 - optional contract law regime 16–17
- constitutional pluralism 193–4, 196
- constitutionalisation
 - of freedom of contract 47, 182, 186, 188–96
 - of private law *see* fundamental rights
- constitutionalism 517
- consumer choice 17, 33, 100, 223
 - big data: predicting future choices 234
 - choice overload 230
- consumer credit 307, 314, 315, 362, 365, 387, 519
 - access 318
 - autonomy, party 45
 - CESL, proposed 471
 - fundamental rights 116, 117
 - Germany 69, 149

- information 224–5, 238, 525
 - annual percentage rate (APR) 231, 295, 319–20
- jurisdiction 409
- regulation 319–20, 331, 332
 - responsible lending 321–3
- residential property, credit
 - agreements relating to 45
- travel agents and linked credit
 - agreements 381–3
- travel law: withdrawal rights 373
- withdrawal rights 243, 246, 254, 261, 373
- consumer image within EU law 3, 38, 59, 199–220, 227–8, 290, 296, 322
- average consumer: UCP Directive 38, 200–217, 219–20, 386, 389, 392, 402
 - average targeted consumers 207–9, 211, 212, 213, 214, 218, 219
 - average vulnerable consumers 209–17, 218, 219, 220, 403, 405
 - standard 202–7, 213
- average consumer in EU consumer law 218–19, 225
- consumer law, development of 2–5
- consumer organisations 308, 313, 378, 408, 423
- Consumer Protection Cooperation Regulation 424–6
- Consumer Rights Directive 4–5, 7, 9, 60, 73–4, 79, 266, 280–281, 437–8, 521, 522, 552
- 2008 draft 437
- add-ons 230
- CESL, proposed 442, 445–6, 449
- digital content 272
- information duties 224–5, 233–4, 400, 437, 438
- interoperability of digital content 233
- mandatory disclosures 225
- package travel 364
- personalised information: big data 233–4
- Poland 80
- service contracts 355
- timeshare 364
- travel law 362, 364–5, 366, 367, 369, 370, 372–3, 377, 381
- unfair commercial practices and 400, 404
- withdrawal rights 241, 246, 251–65, 355, 438, 522
 - CESL, proposed 445
 - period 252, 260, 261–4
 - tourism services 364
- Consumer Sales Directive 8, 72, 73, 266, 268
 - application of 270–273
 - conformity with contract of sale 274–5
 - implementation of 3–4, 70
 - Germany 74–9, 80–81, 149
 - Poland 79–81
 - United Kingdom 151–2
 - legal basis 269
 - remedies 276–9, 455, 522
 - rescission 277, 278, 279
 - scope of 269–70
 - time limits 276, 280
 - waiver of rights 279–80
- contingency fees 422
- contra proferentem* rule 301
- contract law, emergence of European 5–6
- contract law from 2001 to 2014, 431–62
 - Common European Sales Law, proposed *see separate entry*
 - developments up to DCFR 434–6
 - from DCFR to CESL 436–9
 - consumer protection, high level of 442–3
 - feasibility study 447–8, 455, 456, 467
 - initial instructions 439–40
 - mandatory and default rules 441
 - relationship to Rome I 440–441, 448
 - scope of application 440–441, 448
 - SMEs 443
 - working method 443–7
 - ‘contract’, meaning of 95–6, 144–5
 - contract, obligation to 55
 - contract theory and EU contract law 508–34

- contract theories and contract law theories 509
- EU contract law 518
 - consumer protection 523–4
 - fragmented 519–20
 - fundamental rights 524–5
 - information duties 525
 - instrumental 520–521
 - no direct effect 521–3
 - withdrawal rights 525
- hybrid and ambiguous theories 515–18
- meaning 527–8
 - contract theories are deficient 530–533
 - EU contract law is not contract law 529–30
 - EU contract law must be rejected 528–9
- mismatch 526–7
- monist and pluralist theories 513–15
- positive and normative theories 509–10
- unionist and separatist theories
 - applied political theories 511–12
 - private law's autonomy, theories of 512–13
- contracts of sale 3, 4, 5, 73, 266–86, 307, 338, 471–2
 - background and origin of legislation 267–8
- Directive 99/44/EC 8, 72, 73, 266, 268
 - application of 270–273
 - conformity with contract of sale 274–5
 - implementation of 3–4, 70, 74–81, 149, 151–2
 - legal basis 269
 - remedies 276–9, 455, 522
 - rescission 277, 278, 279
 - scope of 269–70
 - time limits 276, 280
 - waiver of rights 279–80
- Directive 2011/83/EC *see* Consumer Rights Directive
- service contracts and 347, 348–9, 356
- contributory negligence 328, 329
- Convention on the International Sale of Goods (CISG) 76, 267, 268, 444, 447, 458, 478, 480, 497–500, 528, 551
- cooling-off periods *see* withdrawal rights
- copyright 122–3, 130–131
- corporate social behaviour 556
- corporate social responsibility 561
- corrective justice 513, 514, 526, 532
- costs-benefit analysis 102
- costs 540
 - class actions 421, 422
 - injunctions 424
 - loser pays principle 422
 - small claims 415, 416, 417
 - transaction 27, 31, 433–4, 476, 481, 482, 483–4, 485
- Council 437, 528
 - Banking Union 63
 - CESL, proposed 461
 - qualified majority voting 18, 21
 - unanimity 23
- Court of Justice of the European Union (CJEU) 19, 484, 523, 524, 542, 544
 - ADR 417–18
 - commercial practices law 38
 - average consumer 38, 202–3, 205–6, 217
 - company law, national 38
 - competitive contract law 59
 - Consumer Sales Directive 79, 80, 522
 - meaning of consumer 270
 - right to replace defective goods 76–7, 78
 - contracting, competition and price regulation 55
 - damages 71, 77
 - dialogic regime 66
 - direct horizontal effect 134–5, 185, 186–8
 - distance selling 78–9
 - equal pay 134
 - financial crisis 59
 - free movement and contract law 182, 183, 185, 186–91, 193–6
 - freedom of contract 47, 126–7

- fundamental rights 110, 113, 128–30, 137
 - balance competing 122–3, 130–131, 132–3
 - direct horizontal effect 134–5
 - equality between men and women 118–19
 - freedom of contract 47, 126–7
 - Member State derogation from EU law 123–5, 128
 - national measures implementing EU law 112
 - non-discrimination 118–21
- general principles 110, 121, 135, 518, 529
 - public and private law characteristics 43
- identity, European legal 88, 106
 - jurisdiction 410
 - business to business 166–71
 - business to consumer 172–6
- labelling doctrine 223
- mortgage agreements 324–5
- multi-lingual texts 143
- procurement obligations
 - cancel contract where breach of 40
- services 354
- terminology 143, 146
- unfair commercial practices 394, 397, 398, 399
- unfair contract terms 288, 290–291, 292, 299–308, 309–11, 313, 381
 - Annex 298–9
 - core terms 293–4, 295–6
 - mortgage contract 131–3
 - preliminary rulings 296–7, 311
 - social justice 545, 546–7, 548
- US Supreme Court 104–5
- withdrawal rights 248, 249–50, 262–3, 264
- courts 558, 560
 - CJEU *see* Court of Justice of the European Union
 - growing role of 554–6
 - national *see separate entry*
 - specialised 554
- credit agreements *see* consumer credit
- critical contract law theories 517
 - cruises 378
 - cultural objects 160
 - culturalist theories 515
 - Curtin, D 530
 - Czech Republic 270
- damages/compensation 3, 71, 134, 163, 177–8
 - class actions 422
 - Consumer Sales Directive 522
 - Germany 77, 78
 - investment services 328
 - liquidated damages and penalties 492–5
 - punitive 422, 555–6
 - service contracts 353
 - termination of contract 352
 - travel law 374
 - United Kingdom 279, 401
 - United States 105
- data
 - personalisation of information: big 231–40
 - protection 237, 473
- databases
 - Common European Sales Law, proposed 32
 - consumer credit 117
 - consumer protection cooperation 425–6
- Davies, G 189, 190
- Davies, P 188–9
- debt
 - household 63
- deceit 395
- defective goods
 - Germany 69, 75, 76–7, 79
- definitions
 - consumer 4, 150, 267, 270–271, 479
 - consumer goods 271–2, 273
 - seller 4, 271
 - services 336–9, 354, 355
- democratic theory of contract law 514
- developing countries 556
- Dietz, T 563
- difference principle 511, 531
- digital content services 347

- digital single market 7–9, 34, 92, 148, 267, 461, 485–6, 521
 - Common European Sales Law, proposed 13–14, 15–16, 448, 450, 452, 454–5, 470–472, 473, 485
 - competition 64–5
 - intellectual property law 39
- direct horizontal effect 522
 - free movement 134, 182, 184–5, 186–8
 - fundamental rights 114, 115, 133–6, 137, 524
- directives, implementation of 3–4
 - full harmonisation 72–4
 - Germany 148–9
 - Consumer Sales Directive 74–9, 80–81, 149
 - as legislative challenge 68–74
 - Poland 79–80, 81
 - terminology 146–52, 157–8
- disability
 - unfair commercial practices 211, 212, 213, 215, 216
- disclosure, mandated *see* information duties
- discourse theory 512
- discrimination *see* non-discrimination
- distance selling 3, 4, 73–4, 331, 362, 364, 437–8, 525
 - CESL, proposed 446, 460, 472–4, 485
 - Germany 69, 149
 - interoperability of digital content 233
 - travel law 364, 365, 366
 - withdrawal rights 241, 242, 244, 245, 247, 249, 251–2, 264, 265
 - elements of 252–3
 - full harmonisation 245, 246
 - information duties 258–61, 265, 372
 - period 261–4
 - restricting 253–8
 - tourism services 364, 369, 372
- distributive justice 59, 556
- doctrinarism 103, 107
- doorstep and off-premises selling 2, 4, 73–4, 267, 307, 437–8, 446, 472, 525
 - drafting in multilingual context 145
 - Germany 69, 145, 149
 - travel law 364, 365, 366
 - unfair commercial practices 213
 - withdrawal rights 241, 242, 243, 245, 251–2, 264–5, 290
 - elements of 252–3
 - full harmonisation 245, 246
 - information duties 224, 258–61, 372
 - period 261–4
 - restricting 253–8
 - tourism services 364, 369, 372
- Draft Common Frame of Reference (DCFR) 6, 7, 60, 64, 91, 92–3, 98, 154–6, 267, 436–7, 464, 467, 485, 519
 - CESL: differences from 454–7, 469
 - double approach to commercial contracts 503
 - Expert Group established 2010:
 - CESL and 439, 442, 443, 467
 - working method 443–5, 446, 453
 - service contracts 341–2
- drafting legislation *see* multi-lingual approach
- duress 395, 538
- Dworkin, R 514
- e-commerce 267, 282, 362, 365, 461, 473
 - digital single market *see separate entry*
 - personalised information 233–5
 - private international law 165, 179
 - safety certificates 564
- e-communications 54
 - see also* internet
- eBay 480, 564
- economic growth 13, 14, 521, 524, 526
- economic law: market practices 395
- education 56, 358
- efficiency discourse 61
 - Lisbon Summit (2000) 59

- elderly
 - product safety 219
 - unfair commercial practices 212, 213–14, 219, 405
- Electrosteel Europe v Edil Centro* (Case C-87/10) 169
- employment contracts 291, 338, 339, 340, 343
 - annual paid leave 121
 - non-discrimination 119–21, 134–5
- energy 36, 60–61, 292
 - electricity 52–3, 272, 290, 292, 545
 - ‘contract’, meaning of 144–5
 - services of general interest (SGIs) 357
- enforcement 42, 59, 406–8, 426–7, 555, 563
 - alternative procedures *see separate entry*
 - collective and public redress 42, 420–426
 - class actions 105, 408, 413, 420–423, 427
 - unfair contract terms 300, 301–2, 308–11, 423
 - competition law 555
 - negotiated commitment decisions 57–8, 67
 - of consumer protection laws 34
 - judgments: recognition and 95, 163, 176–7
 - personalised information:
 - compliance and 238–9
 - private parties 52, 67, 108
 - public 52, 423
 - unfair commercial practices 400–402
 - unfair contract terms 304
 - individual 304–8
 - public or collective 308–11
 - see also* applicable law; jurisdiction
- entire agreement clause 504–6
- environment 30, 163, 555
- equal pay 134
- equality between men and women 118–19, 135, 136
- essentialism 514, 515, 532, 533
- Estee Lauder Cosmetics* (Case C-220/98) 205–6, 217
- European Banking Authority (EBA) 62–3
- European Central Bank (ECB) 63
 - Outright Monetary Transactions (OMT) programme 62
- European Civil Code 6, 25, 49, 89–90, 92, 436, 438, 448, 465, 467, 485, 519
- European Company
 - Statute for 22
- European Consumer Centres 415, 418, 427
- European Convention on Human Rights (ECHR) 85, 106, 110, 111, 113, 172
 - private and family life (Art 8) 128
- European Council 176, 468
 - Edinburgh (1992) 140
- European Court of Human Rights (ECtHR) 115, 547
 - identity, European legal 85, 106
 - positive obligations 128
- European Law Institute (ELI) 465, 485
- European legal identity 82–108
 - Art 4(2) TEU 87
 - between national languages and EU policy making 94–101
 - consumer protection 98–101
 - ‘contract’, meaning of 95–6, 144–5
 - English language 94
 - key terms: lack uniform meaning 94–5
 - legal culture and legal identity 86–7
 - methodological questions and options 86–9
 - national legal cultures 89–93, 107
 - official languages 93
 - plural 89
 - US comparison 82–3, 84–5, 100–101
 - EU consumer law and 84, 101–6, 107–8
- European Options Exchange (EOE) 328
- European Parliament 176, 317, 528
 - Banking Union 63
 - collective redress 422
 - Common European Sales Law, proposed 7, 459–60, 465, 472, 473, 477, 478, 479, 481, 485

- consultation 23
- European Securities and Market Authority (ESMA) 329, 335
- evidence-based process 25
- expression, freedom of 186
- family law 291
- feedback
 - online 236, 564
 - personalised disclosure 236
 - service contracts 345
- fiduciary duties 340, 349
- financial collateral arrangements
 - terminology 95
- financial crisis 37, 59, 61, 100, 314, 316, 320, 330
 - market regulation after 314, 316, 320, 330, 332–5
 - predatory lending before 540
- financial services 60–61, 62–3, 336, 343, 355, 523
 - annual percentage rate (APR) 231, 295, 319–20
 - annual percentage rate of charge (APRC) 324
 - consumer protection and 5, 314–35
 - access to finance 317–19
 - credit regulation 319–25
 - investment regulation 37, 67, 325–31
 - two domains and two goals 315–16
- distance marketing of 243, 246
- Fin-Net 418, 427
- financial crisis, market regulation after 332–5
- full harmonisation and private law 331–2
- fundamental rights 125–6
- investment services *see separate entry*
- market regulation after crisis 314, 316, 320, 330, 332–5
- package travel 383
- ‘passport’ 318, 325
- responsible lending 320
 - Consumer Credit Directive and 321–3
 - duty to deny credit 322–3, 324
 - mortgage credit 324
 - unfair commercial practices 396
 - unfair contract terms 293
 - withdrawal rights 243, 244, 246
- financial stability 61–4, 67
- Finland 60
- food safety law 35, 41
- force majeure* clause 495–500
- forum non conveniens* 167
- Fra.bo* 187, 193
- France 60, 191, 550
 - consumer organisations 423
 - drafting in multilingual context 145
 - financial collateral arrangements 95
 - financial services 331
 - obligations, law of 97
 - service contracts 340, 346
 - terminology, implementing EU 146–7
 - travel law 383
 - unfair contract terms 299
- fraud 395, 404, 468, 525, 538
- free movement 544
 - autonomy of private law 46–7
 - of capital 183, 185
 - contract law and 182–96
 - constitutionalisation of freedom of contract 188–96
 - ‘effet utile’ 183–6, 188, 189, 194, 196
 - goods 185, 186–8
 - freedom of establishment 134, 183, 184, 194
 - freedom to provide services 183, 336, 354
 - direct horizontal effect 134, 184–5, 188
 - fundamental rights 124–5
 - fundamental rights 113, 124–5, 182, 186, 195, 196
 - of goods 183, 185, 186–8, 336
 - fundamental rights 186
 - positive obligations 128
 - of workers 183, 184
 - direct horizontal effect 134, 184, 185, 188
- free products 394
- free returns 248–9

- freedom of contract 49, 72, 126–7, 133, 136, 378, 411, 538, 548
- constitutionalisation of 47, 182, 186, 188–91
 - multi-level legal order 191–6
- fundamental right: freedom to conduct business 542
- information duties 222
- internal market 544
- libertarian theories 512
- private autonomy 43, 44–5
- social justice 539, 540, 542–3
- withdrawal rights 248
- freedom, negative and positive 46
- Freeport v Arnoldsson* (Case C-98/06) 171
- Freiburger Kommunalbauten* (Case C-237/02) 297
- full harmonisation *see* maximum harmonisation
- functional theories 515–16
- fundamental rights 88, 109–37, 524–5, 536
 - access to services of general economic interest 357
 - Charter of *see separate entry*
 - constitutionalisation of private law 109, 111, 119
 - general framework 111–15
 - direct horizontal effect 114, 133–6, 137
 - direct vertical effect 114, 115, 133
 - equal treatment of men and women 118–19, 135, 136
 - EU law and national laws within scope of EU law 111–15
 - interpretation and application of 113, 122–7
 - scrutiny of 115–22
 - free movement 113, 124–5, 182, 186, 195, 196
 - horizontal effect 526
 - direct 114, 115, 133–6, 137, 524
 - indirect 114–15, 133–4
 - negative obligations 113, 117, 118–19, 125–6, 130, 133, 136
 - non-discrimination 118–21, 134–5, 136
 - positive obligations to protect 113, 127–33, 135, 136–7
 - private international laws, EU 164
 - sources of 110
 - statement of compatibility 116–18, 119
 - see also* human rights
 - future of contract law in Europe 549–65
 - academics 556–60
 - courts 554–6
 - legislatures 551–4
 - place of contract law in future society 562–4
 - private actors 560–562
 - gambling services 397
 - Gandolfi, G 434
 - Gasser v MISAT* (Case C-116/02) 167–8
 - general principles of EU law 43, 110, 121, 135, 518, 529
 - Germany 60, 501, 550
 - Bundestag 26, 461
 - civil code: BGB 44, 69–70, 74–9, 80–81, 123, 148–50, 458
 - obligations, law of 69, 70, 75, 76, 145, 148–9
 - class actions 421
 - Constitution
 - social market 543
 - Constitutional Court 115
 - legal identity 88
 - Lüth* 51, 123
 - positive obligations: fundamental rights 127–8
 - consumer organisations 308, 423
 - Consumer Sales Directive 70, 270
 - consumer, meaning of 271
 - implementation of 74–9, 80–81, 149
 - damages 556
 - drafting in multilingual context 145
 - Europeanisation of national contract law 76
 - financial collateral arrangements 95
 - financial services 323, 328, 331
 - force majeure* clause 496
 - freedom of contract 191–2

- fundamental rights 112, 113, 115, 120, 123
 - human dignity 123–4
 - inequality of bargaining power 127–8
- investment services: duty of care 328
- ordoliberalism 46, 58
- service contracts 338, 340
- SMEs 458
- travel law 383
- unfair commercial practices 401
- unfair contract terms 69, 99, 292–3, 299, 300, 301
 - public enforcement 308
- globalisation 516, 550, 556, 562, 565
- good faith 250, 503–6, 532, 539
 - CESL, proposed 443, 458
 - CISG 458, 497
- consumer travel law 379, 383, 385
- fundamental rights 123, 131
- interpretation of contracts 491–2
- liquidated damages 495
- negotiations 501
- unfair commercial practices 391
- unfair contract terms 95, 123, 131, 287, 292, 296, 299, 300, 546, 547
- government and citizens 555
- Greece 270
- gross domestic product (GDP) of EU 14
- Grundmann, S 543–4
- guarantees 291
 - bank
 - undue influence 50, 51
- Gut Springenheide* (Case C-210/96) 202–3, 217
- Habermas, J 512, 528
- harmonisation 71, 83, 92, 96, 107, 269–70, 525
 - access to finance 317
 - constitutional objections to
 - CESL, proposed 13–34
 - fundamental rights 110, 136, 137
 - future of contract law in Europe 552–3
 - maximum 4–5, 9, 60, 72–4, 99, 432, 433, 437, 442, 463, 552
 - digital market 485–6
 - European Parliament 460
 - financial services 315, 325, 331–2
 - unfair commercial practices 199, 206, 388, 395–8, 399, 404
 - unfair contract terms 287, 312, 313
 - United States 104
 - withdrawal rights 245–6, 250, 265
- minimum 3–4, 60, 72–3, 74, 75, 98–9, 268, 270, 442, 463
 - European Parliament 460
 - mortgage credit 324
 - unfair commercial practices 396
 - unfair contract terms 299, 311
 - United States 104
 - withdrawal rights 245–6
- multi-lingual approach *see separate entry*
- private international laws,
 - approximation of EU *see separate entry*
- social justice 542–8
- spontaneous 75
- standard contracts 488–507
- Hartkamp, AS 187–8
- Hayek, FA von 236
- healthcare 35, 56, 254, 259, 292, 346, 355
 - informed consent 349
 - medical devices 397
 - services of general interest (SGIs) 357, 358
- Heininger* (Case C-481/99) 290
- Heinrich Heine* (Case C-511/08) 248
- Hi Hotel HCF v Uwe Spoering* (Case C-387/12) 170
- hire purchase 271, 471
- Howells, G 107–8
- human dignity 88, 123–4
- human health 102
 - see also* healthcare
- human rights 159
 - ECHR 85, 106, 110, 111, 113, 128, 172
 - ECtHR 85, 106, 115, 128, 547
 - see also* fundamental rights
- Hungary 271

- Huyse, L 555
- Iceland 63
- impact assessment
 CESL: subsidiarity and 24–8
 Impact Assessment Board 25
- Incardona, I 203
- INCOTERMS 503, 506
- indirect effect 522–3
- industrial action 163, 184–5, 194
- inertia selling 371, 400
- information 218, 316, 446, 449, 466, 482, 483
 ADR 419–20
 air passengers 376
 asymmetry 54, 222, 244, 256, 258, 263, 319
 travel law 369
 behaviourally informed 230–231
 big data 231–40
 feedback 236
 consumer protection cooperation 425–6
 impact assessment: CESL 24–8
 online legal information system 557–9
 outsourcing regulatory tasks 56–7
 overload 216, 230–231, 233, 259, 330
 package travel 376
 in good time 368
 service not realised 374–5
 privacy 237–8
 smart disclosures 230–231
 travel law 360, 365, 365–8, 374–5, 376, 383, 387
 unfair commercial practices 216, 392–3
 voluntary disclosures 228
 withdrawal rights 224, 229, 243, 244, 248, 251, 252–3, 256, 258–61, 263
- information duties, pre-contractual 2–3, 5, 59, 74, 192, 468, 473, 525, 526, 545
- access justice 531
- airline tickets, online sales of 396
- Consumer Rights Directive 224–5, 233–4, 400, 437, 438
- financial services 318, 332, 335
 credit 319–20, 321, 322, 324
 investment 326, 330
- future of 221–40
 big data 231–40
 information paradigm 222–5
 limitations 226–8
 possible regulatory alternatives 228–31
- sanctions 71
- service contracts 344, 345, 348–9, 355, 356, 359
- travel law 365, 365–8, 383, 387
- unfair commercial practices 392–3, 395, 396, 399, 400, 403, 404
- withdrawal rights 224, 229, 248, 251, 252–3, 258–61, 265
 informing about restrictions 258–60
 specific consequences of failure 260–261
- injunctions 422, 423, 427
 Consumer Injunctions Directive 424
 unfair commercial practices 400, 401
 unfair contract terms 308–9, 310
 United States 105
- innovation
 product 321
 regulatory 333
- insolvency 63, 307, 383
- insurance 36–7, 51, 351, 355
 premiums 118–19, 135
 travel law: withdrawal rights 373
 UK: payment protection 421
 unfair contract terms 293–4
- intellectual property 39, 122–3, 130–131
- applicable law 163
 consumer image 202, 204–5, 218
 digital content 272
 jurisdiction 170
- interdisciplinarity 103, 359, 556–7
- internal/single market 71, 72, 73, 153, 192, 406–7, 412, 432, 433, 520
- autonomy of private law 43–5, 47

- Common European Sales Law,
 proposed 474–81, 485
 constitutional objections 13–34
 competitive contract law 58–9, 61–2
 digital *see* digital single market
 financial stability 61
 information paradigm 223
 liberalisation of former state
 monopolies 53
 New Approach 57, 67
 social justice 541, 542, 543–4
see also free movement
- international law
 authentic text 143
see also transnational law
- internationalisation of society 562–5
- internet 13–14, 433, 519, 525
 ADR 420
 Online Dispute Resolution (ODR)
 418, 419, 427, 554
 airline tickets, online sales of 396
 auctions 473
 behavioural advertising 235
 CESL, proposed 440, 479, 480–481,
 485–6
 digital content 15–16, 448, 450,
 452, 454–5, 470–472, 473,
 485
 fake online reviews of hotels 383–6
 feedback 236, 564
 jurisdiction 410
 legal guidance systems 557–9
 reputational networks 563–4
 service providers 356
 travel law 366, 367
- interpretation of contracts 490–491, 539
 ambiguities against the drafter 50
force majeure 495–500
 letters of intent 500–502
 liquidated damages and penalties
 492–5
 transnational law and uniform 502–6
- interpretation of multilingual texts 158
- interpretative contract theories 516
- intuitionism 518
- investment services 36–7, 314, 315,
 318, 325
 fundamental rights 125–6
- MiFid 37, 318, 325–7, 331–2, 333,
 335
 conduct of business obligations
 326, 327, 328–9
 ‘execution only’ transactions
 327–8
 ‘know your customer’ rules 327–9
 review of 37, 67, 329–30, 331, 334
- UCITS 318, 330–331
 warnings: complex financial products
 323
- investor protection law 36–7
- Invitel* (Case C-472/10) 297, 298,
 309–10
- Ireland 331
- Italy 191, 270
 consumer organisations 423
 drafting in multilingual context 145
 freedom to conduct a business 192
 fundamental rights 112
 investment firms 331
 services 341
 terminology, implementing EU 147,
 148
- ius commune* 93, 527
- Ius Commune Casebooks for the
 Common Law of Europe* 91
- Jansen, N 93, 562
- Jenard Report 166
- Jobcentre Leipzig* (Case C-333/13) 130
- Joerges, C 543
- judicial cooperation 23
- jurisdiction 95, 160, 161–2, 408–11,
 455, 553
 agreements 160, 162, 164, 165, 166,
 167–8
 Amsterdam Treaty 163, 165
 Brussels Convention 1968, 163, 164,
 167–8, 175
 Brussels I and Recast Regulation 164,
 165, 409, 413
 business to business 166–71
 business to consumer 172–6
 consumer contracts: privileged rules
 162–3
- Lisbon Treaty 164, 165
- Lugano Opinion 163–4

- non-EU states 164, 165, 166, 176
- juristocracy 66
- justice 532–3, 543
 - access 530–533
 - access to 415, 419, 421, 557
 - corrective 513, 514, 526, 532
 - distributive 59, 556
 - for growth 520–521
 - social *see separate entry*
- Kant, I 515
- Kásler* (Case C-26/13) 295–6, 304, 313
- Kirk, J 213
- Kruger, T 166
- Küçükdeveci* (Case C-555/07) 119–20, 135
- labour contracts 291, 338, 339, 340, 343
 - annual paid leave 121
 - non-discrimination 119–21, 134–5
- labour law 47, 51
- Lamfalussy procedure 37
- Land Berlin v Sapir and Others* (Case C-645/11) 171
- Lando, O 90, 91, 434
- language 433, 458, 469, 473
 - average consumers 206–7, 208
 - multi-lingual approach *see separate entry*
 - small claims 416
 - travel law 367
- Laval* (Case C-341/05) 184–5, 193
- legal aid 413
- legal certainty 67, 251, 312, 395, 560, 561, 562–3
 - legal translation 142
 - private international law 167, 178
- legal professions 103, 107, 291, 413–14, 416–17, 557–8, 562
- legitimate expectation
 - public procurement 40
- Lehman Brothers 38
- Leitner* (Case-168/00) 71
- letters of intent 500–502
- Lewin, B 213
- liberal theories 511
- liberalisation of former state
 - monopolies 36, 44, 46, 53, 55, 60–61, 358
- libertarian paternalism 229–30
- libertarian theories 512, 516, 526, 528
- life assurance 242, 245
- limitation periods 307–8, 444, 476
- liquidated damages and penalties 492–5
- Lisbon Summit (2000)
 - efficiency discourse 59
- Lokman Emrek v Vlado Sabranovic* (Case C-218/12) 175
- Luxembourg 331
- Mak, C 85
- Mak, V 202
- Mangold* (Case C-144/04) 118–20
- margin of appreciation 206
- marketing 187, 208, 213–14, 219, 244, 245, 483
 - behavioural advertising 235
 - buzz 384
 - financial services: distance 243, 246
 - MiFID 329
 - profiling, consumer 233–9
 - UCITS 331
 - unfair commercial practices 389, 390, 397, 399, 403
- Mattei, U 91
- maximum harmonisation 4–5, 9, 60, 72–4, 99, 432, 433, 437, 442, 463, 552
 - digital market 485–6
 - European Parliament 460
 - financial services 315, 325, 331–2
 - consumer credit and investment 315, 325
 - unfair commercial practices 199, 206, 388, 395–8, 399, 404
 - unfair contract terms 287, 312, 313
 - United States 104
 - withdrawal rights 245–6, 250, 265
- mediation 417
- Melzer v MF Global UK Ltd* (Case C-228/11) 170
- Messner* 78–9, 250, 262–3, 264
- Micklitz, H-W 219, 310, 530–531
- MiFID *see under* investment services

- Mill, JS 236, 515
 minimum harmonisation 3–4, 60, 72–3,
 74, 75, 98–9, 268, 270, 442, 463
 European Parliament 460
 mortgage credit 324
 unfair commercial practices 396
 unfair contract terms 299, 311
 United States 104
 withdrawal rights 245–6
 misrepresentation 395
 mistake 395, 404, 443, 458, 468, 525,
 538
Mohamed Aziz (Case C-415/11)
 299–300, 306–7
 monism 193, 513–15, 518, 526, 527,
 532, 533
 morality 556
 and legal identity 88
 mortgage contracts/credit 117, 131–3,
 135, 136, 225, 314, 323–5
 annual percentage rate (APR) 231
 information 231, 238
 responsible lending 320, 322–3, 324
 creditworthiness assessment 324
 unfair contract terms 295–6, 306–7,
 547
Mostaza Claro (Case C-168/05) 288–9,
 305
Mühlleitner (Case C-190/11) 174–5
 Muir-Watt, H 165
 multi-layered system 523, 551–2, 557,
 560
 multi-lingual approach 94–5, 138–58
 consistent terminology 152–4
 ‘contract’, meaning of 95–6, 144–5
 DCFR and CESL, proposed 154–7
 drafting legislation: *Joint Practical
 Guide* 140–141
 drafting problems 143–5
 English language 94, 155–7, 158
 language and terminology matter
 139–41
 national legal systems and EU
 terminology 146–52, 157
 official languages 93, 141–2, 156–7
 translation, role of legal 141–3, 158
 multinational companies 194, 479
 mutual recognition 29, 164

 Art 81 TFEU 23

 National Competent Authorities
 (NCAs) 425
 national courts 19, 52, 66, 307, 522–3
 average consumer 205, 206
 Common European Sales Law,
 proposed 32
 fundamental rights 113, 125
 supply and install contracts 273
 unfair contract terms 293, 299–300,
 304, 305, 310, 313, 381, 547
 United Kingdom 152
 national legal cultures/systems and
 European legal identity 82–3,
 89–93, 107
 national parliaments 553–4
 subsidiarity principle
 monitoring compliance with 24–7,
 28, 34
 natural law 509
 necessity 186
 fundamental rights 125
 negligence 353
 contributory 328, 329
 neo-pandectism 512, 527
 neoliberalism 315, 530
 Netherlands 60
 financial services 323, 328, 331, 334
 investment: duty of care 328
 responsible lending 324
 services 341
 neuroscience 221, 226, 227, 239
 new public management 56
 non-discrimination 158, 469, 531
 age 119–21, 135
 direct horizontal effect 134–5
 free movement 183–4
 investment services 329
 sex 118–19, 135, 136
 sexual orientation 121
 Nordic countries 99, 308
 Norway 489, 497–9
 notaries public 355
 nudging 66, 229–30

 Obama, Barack 103

- Océano Grupo* (Cases C-240/98 to C-244/98) 288, 290, 298, 304
- ÖFAB, Östergötlandsv Koot* (Case C-147/12) 170–171
- off-premises selling *see* doorstep and off-premises selling
- ombudsmen 308, 421, 423
- Omega* (Case C-36/02) 88, 123–5, 128
- open-method of coordination 41–2
- options 328
- ordinary legislative procedure 18, 137
- ordoliberalism 46, 58, 512, 526
- outsourcing of regulatory tasks 55–7, 67
- Owusu v Jackson* (Case C-281/02) 167
- pacta sunt servanda* 40, 63
- Pammer and Hotel Alpenhof* (Cases C-585/08 and C-144/09) 173–4
- Pannon* (Case C-243/08) 298–9, 305
- Parliament v Council* (Case 436/03P) 18, 20, 22, 30
- partnership agreements 291
- passengers 358, 387, 523
 - air 103, 360, 361, 520
 - business travellers 362
 - information 376
 - performance, rules on 374, 375–6
 - Unfair Contract Terms Directive and low-cost flights 377–81
 - bus and coach 375, 377
 - Consumer Rights Directive 364
- paternalism 229, 537
 - libertarian 229–30
- payment orders 414
- payment services 117, 473
- peer-to-peer (P2P) sharing economy 523
- Pelckmans Turnhout* (Case C-559/11) 397
- penalties and liquidated damages 492–5
- pensions 51
- Pereničová* (Case C-453/10) 399
- personalisation of information: big data 231–40
- pharmaceuticals 397
- pluralism 192–4, 196, 513, 514–15, 518, 532, 533, 534
- Poland
 - directives, implementation of 79–80, 81
 - unfair contract terms 294–5
- Poncibo, C 203
- Portugal 191, 273, 341
- poverty 211, 301
- power relations *see* bargaining power
- Prassl, J 195
- precautionary principle 102–3
- preliminary references (Art 267 TFEU) 112, 288, 296–7, 311, 484, 544
- prescription periods 307–8, 444, 476
- pricing, personalised 235
- Principles on European Contract Law (PECL) 90, 281, 436, 443–4, 445, 456, 492, 503, 504–5, 519
- Principles of European Law: Service Contracts (PELSC) 341–2, 343, 348, 349, 353
- privacy 237–8, 415
- private actors: future of contract law in Europe 560–562
- private and family life 117, 128
 - home, right to 133, 135, 136, 546–7
- private international laws,
 - approximation of EU 159–81
 - Brussels I and Recast Regulation 164, 165
 - business to business 166–71
 - business to consumer 172–6
 - CESL, proposed 179–80
 - collective redress 177, 178
 - damages for anti-competitive behaviour 177–8
 - enforcement of judgments 163, 176–7
 - mutual recognition 176–7
 - mutual trust 167–8
 - objectives of conflicts justice 161–3
 - power inequality 162–3
 - procedural framework 163–6
 - reflex effect* 167
 - partial 160, 165, 176
- privatisation 36, 46, 53, 60–61, 64–5, 555
- process servers 355
- product liability law 51, 444
 - applicable law 163, 412

- jurisdiction 411
 - United Kingdom 150
- product safety 41, 219
 - United Kingdom 150
- profiling, consumer 233–7
 - compliance and enforcement 238–9
 - privacy 237–8
- Promusicae* (Case C-275/06) 122–3, 130–131, 132
- property law 91, 263, 323, 467, 470, 556
- proportionality 66, 92, 107, 186, 223, 543
 - Common European Sales Law, proposed 20, 21, 24, 26–7, 464
 - consumer image within EU law 199
 - defective goods: remedy 76–7, 80, 276, 277, 278
 - fundamental rights 125
 - investment services 329
 - private autonomy and regulation 48
 - small claims: costs 416
 - unfair commercial practices 202, 401
- prostitution 192
- psychology 221, 226–7, 239, 332, 403
- public interest 135, 412
 - consumer credit 322
 - delegated and supervised self-regulation 56, 66–7
 - freedom to conduct a business 126–7
- public policy
 - applicable law for consumer contracts 163
 - enforcement 413
 - freedom of contract 47, 192, 538
 - fundamental rights 113, 123, 124, 125
 - legal identity 88
 - private law modified 51–2
 - unfair terms 305
- public procurement law 35, 40, 354, 358
- Purely Creative* (Case C-428/11) 394
- Quelle* 78, 79, 276
- rationality 320
 - bounded 204, 227, 228, 230, 320, 330
 - rational choice model 227
 - rational utility maximisers 203–5, 219
 - withdrawal rights 244–5, 246–9, 252, 254, 256, 257, 262, 264
- Rawls, J 512, 533
- reconstructive theories 516
- rectification orders 400
- Reding, Viviane 438
- regulatory agencies, independent 56–7
- regulatory character of European private law 35–67
 - autonomy 42–8
 - four freedoms 46–7
 - hybridisation 43–4
 - judicial resistance 45
 - liberalisation 44, 46
 - regulated 45–6
 - (un-)systematics 44
 - competition 53–4, 58–65
 - competitive contract law 58–9, 60, 61–2, 64
 - digital single market 64–5
 - efficiency 59, 61
 - financial stability 61–4, 67
 - default rules 52, 66
 - European regulatory private law 35–6
 - body of rules 36–41
 - new forms of law making and enforcement 41–2
 - regulation 48–58, 65–7
 - contract as regulatory instrument 57, 67
 - help for businesses 54
 - help for consumers 54–5
 - inequality 49–51
 - liberalisation 53, 55
 - market entry 52–3
 - national context 48–52
 - needs-based concerns 51
 - outsourcing 55–7, 67
 - public policy 51–2
 - reasonable price 55
 - redistribution 51
 - self- 57, 66–7
 - state ownership 53
 - switching 54, 61, 66
 - tariff-rates 52–3

- universal service obligation 36, 55, 66
 - welfarism 49, 50
- representations
 - contractual 20
- reputational networks 563–4
- restitution 444, 468
- risk(s) 314, 319, 334, 351
 - assessment 102, 135
 - averse 434, 443
 - systemic 63
- Rödl, F 543
- Roman law 336, 339, 343, 348, 512
- Romania 97
- Rome I Regulation 17, 33, 178–80, 411–12, 433, 541, 553
 - CESL, proposed 440–441, 442, 449–50, 469, 475–7, 484
- Rome II Regulation 163, 178, 412, 469, 484
- rule of law 67
- RWE* (Case C-92/11) 297, 298

- sales contracts *see* contracts of sale
- Sapod* (Case C-159/00) 186–7
- Sassen, S 55
- Sauter, W 544
- Scandinavian Ombudsmen 423
- Schepel, H 187, 188, 195, 544
- Schmidberger* (Case C-112/00) 186, 187
- Scotland 331
- Seccombe, M 85
- second-hand goods 277
 - sold at public auction 273
- self-enforcement 563
- self-regulation 57, 66–7, 316, 386, 390, 519
- service contracts 336–59, 440, 471–2
 - comparative observations on 342–53
 - content 345–8
 - payment 350–351
 - professional diligence and information duties 348–9
 - remedies: defective services 352–3
 - scope of service contract 343–5
 - termination 351–2
 - defining services 336–9, 354, 355
 - digital content services 347
 - EU law 35, 41, 60–61, 354–6
 - European principles 341–2
 - fiduciary duties 340, 349
 - fundamental rights 357
 - independent contractors 339, 340, 344
 - national law on 339–41
 - private regulation 347–8, 359
 - professional diligence 348–9
 - services of general interest (SGIs) 219, 356–8, 363
 - universal service obligation 36, 55, 66, 219, 358
 - services of general (economic) interest (SG(E)Is) 219, 356–8, 363
- sex discrimination 118–19, 135, 136
- sexual orientation
 - discrimination 121
- Single European Payments Area (SEPA) 318
- single market *see* internal/single market
- Sky Österreich* (Case C-283/11) 126, 127
- small claims 414–17, 426–7
- small and medium-sized enterprises (SMEs) 59, 64, 434
 - Common European Sales Law, proposed 15–16, 64, 443, 450, 458–9, 475, 478, 479–80
 - Consumer Sales Directive: small businesses 270–271
- smart disclosures 230–231
- Smits, J 240
- social European private law 36
- social exclusion 59, 317
- social justice 196, 511, 535–48
 - access justice 530–533
 - contract law and 537–41
 - EU and contract law 541
 - EU framework and harmonisation of contract law 542–4
 - EU private international laws 159, 160, 161–2, 165, 172, 178, 180–181
 - harmonisation of contract law 544
 - unfair terms in B2C contracts 545–7

- meaning of 537
- scope of 537
- terminology 536–7
- social market economy 543, 544
- social policy 29–30, 55, 179, 188–9
- social security services
 - services of general interest (SGIs) 357
- Société de législation comparée 91, 154, 444
- soft law 316, 333, 434, 492, 502
- solidarity 537, 543, 544
- Spain 63, 191
 - consumer organisations 423
 - financial collateral arrangements 95
 - fundamental rights 112
 - investment firms 331
 - services 341
 - terminology, implementing EU 147–8
 - travel law 379, 383
 - unfair contract terms 299
- standard setting by private bodies 41–2, 57, 67
- standard terms 192, 305, 434, 443
 - as alternative to legislation 487–507
 - force majeure* clause 495–500
 - governing law 489–502
 - harmonisation 488–9
 - letters of intent 500–502
 - liquidated damages and penalties 492–5
 - transnational law and uniform interpretation 502–6
 - uniform interpretation:
 - transnational law 502–6
 - CESL, proposed 483
 - Germany 69, 292
 - information duties 59
 - licence contracts 39
 - travel law 378
 - unfair terms 287, 288
- standards, technical 41–2
 - Banking Union 63
- state aid 35, 40, 544
- Staudenmeyer, D 277
- Stiglitz, JE 540
- stopping orders 400
- strict liability 496
- Stuyck, J 211
- subject to contract 500
- subsidiarity principle 7, 92, 107
 - CSEL, proposed 14–15, 22, 29, 33–4, 464, 478
 - Art 114: eliminate obstacles 18
 - impact assessment 24–8
 - optional contract law regime 16–17
 - fundamental rights 111
- succession rights 291
- supremacy of EU law 19
- suretyship 192
- surrogacy 192
- Susskind, R 557, 558
- Sweden 273
- switching 54, 61, 66, 394
- Switzerland 191, 341
- system theories of law 516
- taxation 540
- technical standards 41–2
 - Banking Union 63
- telecommunications 36, 52–3, 54, 60–61, 292
 - services of general interest (SGIs) 357
- television broadcasting
 - freedom of contract 47
- tenancy agreement 290–291, 301
- termination of contract 444, 445, 456, 468, 495, 525
 - Germany 69, 79
 - travel law 373–6
 - unfair commercial practices 394
- terminology
 - linguistic diversity *see* multi-lingual approach
- Test-Achats* (Case C-236/09) 118
- third-party access in B2B relations 61
- Tjon Soei Len, L 556
- tobacco products 102
 - Tobacco Advertising* (Case C-376/98) 30, 105
- tort law 53, 66, 91, 156, 166, 168, 169, 185, 186, 556
 - CESL, proposed 285, 470

- financial services 315, 327, 328, 331
- jurisdiction 411
- unfair commercial practices 395, 404
- tourism 361, 363
 - travel law, consumer *see separate entry*
- trademarks 392
- transaction costs 27, 31, 433–4, 476, 481, 482, 483–4, 485
- Transatlantic Trade and Investment Partnership, proposed 85, 102
- translation
 - ADR 418
 - multi-lingual approach *see separate entry*
 - small claims 416, 417
- transnational law and uniform
 - interpretation 502–6
 - see also* international law
- transparency 218, 263, 313
 - ADR entities 419
 - competitive contract law 59
 - financial services 319–20
 - investment 326
 - impact assessment 25
 - product scores 231
 - unfair contract terms 295–6, 301–2, 545
- transport 52–3, 60–61, 339, 343, 485
 - accident 360
 - liberalisation and privatisation 36
 - passenger 358, 387, 523
 - air *see* air passengers' rights
 - bus and coach 375, 377
 - Consumer Rights Directive 364
 - policy 361, 520
 - Services Directive 355
 - services of general interest (SGIs) 357, 358
- travel law, consumer 2, 336, 360–87
 - air
 - accidents: liability of carriers 360
 - passengers *see* air passengers' rights
 - Consumer Rights Directive 362, 364–5, 366, 367, 369, 370, 372–3, 377, 381
 - credit agreements
 - travel agents and linked 381–3
 - withdrawal rights 373
 - information duties 360, 365, 365–8, 376, 383, 387
 - service not realised 374–5
 - package travel 2, 71, 347, 360–361, 364–5, 519
 - Germany 70
 - information duties 365–8
 - rules on performance 373–5, 376–7
 - travellers 362–3
 - unfair terms 378
 - withdrawal rights 368–70, 371–2
 - performance, rules on 373–7, 387
 - timeshare 2, 4, 225, 361, 363, 364–5, 367, 519
 - Germany 149
 - unfair terms 378
 - withdrawal rights 242, 243, 245, 246, 254, 261, 368–71
 - unfair commercial practices 362, 365, 374, 387
 - fake online reviews of hotels 383–6
 - unfair contract terms 362, 365, 387
 - low-cost flights 377–81
 - withdrawal rights 364, 365, 368–73, 383, 387
 - timeshare 242, 243, 245, 246, 254, 261, 368–71
- TripAdvisor, Inc 386
- Turner v Grovit* 168
- Twigg-Flesner, C 268, 272
- UCITS 318, 330–331
- UN World Tourism Organization (UNWTO) Working Group 361, 363
- unconscionability 50
- undue influence 50, 51, 393
- unfair commercial practices 5, 319, 362, 365, 388–405
 - after-sales conduct 390
 - aggressive practices 200, 393–4
 - average consumer 38, 200–217, 219–20, 386, 389, 392, 402
 - average targeted consumers 207–9, 211, 212, 213, 214, 218, 219

- average vulnerable consumers
 - 209–17, 218, 219, 220, 403, 405
 - standard 202–7, 213
- blacklist (Annex I) 200, 390, 394, 397–8, 400
- definition of ‘practice’ 390
- enforcement 400–402
- further research 404–5
- material distortion 391–2
- maximum harmonisation 199, 206, 388, 395–8, 399, 404
- misleading practices 200, 392–3, 394
- outline of Directive 199–200, 389–90
- professional diligence 391
- protection and self-reliance 402–4
- relationship with other EU rules 398–400, 404
- travel law 362, 365, 374, 387
 - fake online reviews of hotels 383–6
- unfair contract terms and 399–400, 404
- unfair contract terms 3, 4, 5, 73, 218, 229, 287–313, 351, 462
- arbitration clauses 105–6, 420
- autonomy of private law 45
- CESL, proposed 287, 312, 452, 455, 458, 468, 477
- CISG 458
- collective or public enforcement 300, 301–2, 308–11, 423
- ‘contract’, meaning of 144–5
- Directive 93/13/EEC 72, 99, 288, 311–12
 - aims and objectives 288–9
 - core terms 293–6
 - enforcement 304–11
 - included types of contracts 290–292
 - prescription periods 307–8
 - scope of application 289–96
 - travel law 377–81
 - unfairness, consequences of 302–4
 - unfairness test 293, 295, 296–302, 311–12, 546, 547
- European legal identity 99
- fundamental rights 123, 131, 132–3, 135
- Germany 69, 99, 292–3, 299, 300, 301
 - collective enforcement 308
 - good faith 95, 287, 292, 296, 299, 300, 546, 547
 - fundamental rights 123, 131
 - mortgage contract 131–3, 135, 136
 - perspectives 312–13
 - public utilities 144–5
 - significant imbalance 95, 131, 292, 296, 299–300, 379, 546, 547
 - social justice 544–7, 548
 - technical standards 41
 - travel law 362, 365, 387
 - low-cost flights 377–81
 - unfair commercial practices and 399–400, 404
- Unidroit Principles of International Commercial Contracts (UPICC) 444, 503, 504, 505–6
- United Kingdom 4, 60, 191, 437, 458, 461, 550, 551
- ADR 418
- commercial agents 90, 97
- Consumer and Markets Authority 423
- Consumers’ Association 308
- contracts of sale 4, 151–2, 267–8, 269, 272, 274, 279
- digital content 450
- directives, implementation of 4, 150–152
- drafting in multilingual context 145
- fiduciary duties 340
- financial collateral arrangements 95
- Financial Conduct Authority (FCA) 403
- Financial Ombudsman scheme 421
- force majeure* clause 496–7
- good faith 491–2
- House of Commons
 - EU Scrutiny Committee 26–7, 28
- interpretation of contracts 490–492
- investment services 331
 - breach of statutory duty 328–9

- legal identity 87, 90, 97
- letters of intent 501
- liquidated damages and penalties 492–5
- Office of Fair Trading 424
- private international law 173
- Scotland 331
- service contracts 340, 343
- small claims 415, 417
- trade descriptions 210–211
- unfair commercial practices 401
- unfair contract terms
 - bank charges 294
 - enhanced consumer measures 309
 - public enforcement 308, 423
- Which?* 423
- United Nations
 - Convention on the International Sale of Goods 76, 267, 268, 444, 447, 458, 478, 480, 497–500, 528, 551
- United States 82–3, 84–5, 100, 229, 333, 410
 - class actions 105, 422
 - EU consumer law and experience in 101–6, 107–8
 - predatory lending 540
- universal service obligation 36, 55, 66, 219, 358
- unjust enrichment 444, 470
- utilitarianism 511, 526–7

- Van Caenegem, RC 550, 560
- Van Gend en Loos* (Case 26/62) 19
- Van Gerven, W 91
- Van Rompuy, H 62
- video conferencing 416, 417
- Viking* (C-438/05) 184, 185, 187, 193, 194
- Vlaamse Reisbureaus* (Case C-311/85) 186–7
- Volksbank Romania* (Case C-602/10) 324–5
- von Bar, C 91, 436
- vulnerable consumers 100, 125, 219, 225, 229, 265, 386, 394
 - access to finance 317
 - average 209–17, 218
 - responsible lending 322–3
 - unfair commercial practices 394
 - average vulnerable consumers 209–17, 218, 219, 220, 403, 405
 - unfair contract terms 300–301
- waiver of rights
 - Consumer Sales Directive 279–80
- Walrave and Koch* (Case C-36/74) 183–4
- warnings 316, 322, 323, 328
 - duty to warn 321, 323
 - MiFid 326
 - service providers 349
- warranties 229
- water supply 144, 272, 290, 292
 - services of general interest (SGIs) 357
- Weatherill, S 204, 220, 269
- Weber/Putz* (Cases C-65/09 and C-87/09) 76–7, 78, 80
- Weiler, JH 85
- welfare state/system 56, 537, 538
- Wendehorst, C 338
- Wilhelmsson, T 5, 49, 107–8, 205, 206–7
- withdrawal rights 2, 3, 4, 5, 59, 192, 229, 241–65, 468, 525, 526, 527
 - access justice 531
 - CJEU, contribution of 249–50, 262–3, 264
 - codified systems: implementation of directives 69, 71, 74, 79
 - consumer image 218
 - Consumer Rights Directive 241, 246, 251–65, 355, 438, 522
 - approach 251–2
 - CESL, proposed 445
 - elements 252–3
 - restrictions 253–8
 - tourism services 364
 - delivery costs 248, 260
 - drafting in multilingual context 145
 - explanation of 241–2
 - France 145
 - Germany 69, 79, 149–50
 - inefficiency, promoting 246–9

- information asymmetry 244, 256, 263
- information duties, pre-contractual
 - 224, 229, 248, 251, 252–3, 258–61, 265
 - informing about restrictions 258–60
 - specific consequences of failure 260–261
 - travel law 369, 372
- informational disadvantages 243
- Italy 145
- justification for 242–5
- period 71, 252, 260, 261–2
 - customer behaviour 262–4
- personalised goods 255
- rationality 244–5, 252, 254, 256, 257, 262, 264
 - protecting 246–9
- restricting 253–8
 - conditional exclusion 256
 - consent to performance 257–8, 265
 - interaction with the good 256–7, 262
 - travel law 364, 365, 368–73, 382, 387
 - timeshare 242, 243, 245, 246, 254, 261, 368–71
- workers' protection 195
- Zimmermann, R 93

